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SENATE BILL 160 By
Clabough

HOUSE BILL 600
By McCord

AN ACT to amend Tennessee Code Annotated, Section 34-11-103; Title 36; Title 37; Section 63-6-218 and Title 68, relative to the abandonment of infants.

WHEREAS, the general assembly recognizes the growing instances of infant abandonment throughout the United States and the state of Tennessee, and the detrimental effect infant abandonment has on children and families in the state of Tennessee; and

WHEREAS, the general assembly recognizes the need to provide a system through which parents may safely relinquish custody of unwanted newborns and to provide community educational outreach that will inform pregnant women of services and alternatives available through the department of health and the department of children's services; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, is amended by adding the following Sections 2-17 as a new chapter.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Abandonment" means the voluntary surrender by a parent, of physical possession of a infant, aged seventy-two (72) hours or less, to an emergency medical service provider without an intent to return for the infant.

(2) "Emergency medical service provider" means a licensed hospital, as defined in Tennessee Code Annotated, Section 68-11-201, which operates an emergency department. An emergency medical services provider does not include the office, clinics, surgery centers, or treatment facilities of private physicians or dentists, unless such individual or entity voluntarily assumes responsibility for the custody of the infant.

SECTION 3. An emergency medical service provider shall, without court order, take physical possession of a child, aged seventy-two (72) hours or less, if the child is voluntarily delivered to the provider by the child's parent and the parent did not express an intent to return for the child.

SECTION 4. The parent surrendering the infant must provide personal identification or the identity of the other parent. Any information obtained by an emergency medical services provider concerning the identity of the person surrendering the infant, the infant's parents, or the infant, shall be kept confidential and may only be disclosed to the department of children's services.

SECTION 5. An emergency medical services provider who takes possession of a child under this section shall perform any act necessary to protect the physical health or safety of the child.

SECTION 6. The emergency medical services provider shall offer the parent leaving the infant information concerning the possible legal effects of the surrender, adoption, and foster care. The provider shall attempt to obtain from the parent surrendering the infant, information concerning the infant's background and medical history, including information concerning the use of controlled substance by the infant's parent.

SECTION 7. No later than the close of business of the first business day after the date on which an emergency medical services provider takes possession of a child pursuant to Section 3, the provider shall notify the department of children's services that the provider has taken possession of the child.

SECTION 8. The department of children's services shall, pursuant to Tennessee Code Annotated, Sections 34-11-103(a) and 37-5-106, assume the care, control, and custody of the child immediately on receipt of notice pursuant to Section 5, and shall have the authority and responsibility to consent to any necessary medical care for the child without orders from any court.

SECTION 9. Immediately after receiving notice from an emergency medical services provider, the department shall contact the Tennessee bureau of investigation for assistance in assuring that the infant is not a missing infant. The Tennessee bureau of investigation shall treat the request as ongoing for a period of thirty (30) days and shall contact the department if a missing infant report is received that might relate to the surrendered infant.

SECTION 10. If, within fifteen (15) days of the voluntary surrender of the infant, the parent returns to reclaim the infant, the department shall, prior to releasing the infant, verify the identity of the person and conduct an assessment of the person's ability to parent. The department shall also, in its assessment, discuss adoption and foster care as alternatives and make a determination as to whether there is a substantial danger of abuse or danger to the infant. If the department determines that the infant is not in danger of abuse, neglect, or other harm, then the infant shall be released to the parent or legal guardian.

SECTION 11. A parent who leaves an infant with an emergency medical services provider shall not be prosecuted for any criminal offense if the parent acts in full compliance with the provisions of this act. It is affirmative defense to prosecution under Tennessee Code Annotated, Sections 37-1-157 and 39-15-401, if the parent voluntarily delivers the child to an emergency medical services provider pursuant to Section 3.

SECTION 12. No person shall be subject to civil, criminal, or administrative liability for accepting and caring for the infant in accordance with Tennessee Code Annotated, Section 63-6-218, or any of the provisions of this act, provided that the person complies with all provisions of this act.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. The department of health, in conjunction with the department of children's services, shall establish, promote and maintain a program to raise public awareness of the incidents of infant abandonment and to provide information and intervention services for parents of unwanted infants. The program shall provide the following services:

- (a) An outreach campaign utilizing print, radio, and television public service announcements, advertisements, posters and other materials;
- (b) Educational seminars in community forums;
- (c) Information on adoption and foster care programs;
- (d) Assessing and targeting at-risk populations;
- (e) Providing reliable information to policymakers;
- (f) Ensuring that emergency medical service providers are clearly designated and publicly known as safe havens for surrendering infants;
- (g) Distributing information through county health departments, schools, physicians, health maintenance organizations, law enforcement officers, emergency medical service providers, women's groups, nonprofit organizations, community health organizations, community-based organizations and departmental regional offices; and
- (h) Any additional services the department of health or the department of children's services deems necessary to effectuate the purposes of the program.

SECTION 15. Pursuant to Tennessee Code Annotated, Section 37-3-501, the department of health shall incorporate information regarding safe havens for surrendering infants and alternatives to infant abandonment into the existing informational clearinghouse on teenage pregnancy. Said information shall be available through the clearinghouse toll-free telephone line.

SECTION 16. The department of children's services and the department of health are, through their respective commissioners, vested with all necessary and incidental powers for carrying into effect the purposes and programs set forth in this chapter.

SECTION 17. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 18. Tennessee Code Annotated, Section 36-1-102, is amended by adding the definition of abandonment provided herein in Section 2. Abandonment as defined in Section 2 of this part is a basis for termination of parental rights.

SECTION 19. This act shall take effect on July 1, 2001, the public welfare requiring it.